

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA,

5 -versus-

09-CR-75

6 JOHN PUGLISI.
7 - - - - -

8 TRANSCRIPT OF SENTENCING PROCEEDINGS held in and for
9 the United States District Court, 15 Henry Street, Binghamton,
10 New York, on THURSDAY, June 17, 2010, before the
11 HONORABLE THOMAS J. McAVOY, SENIOR UNITED STATES DISTRICT
12 COURT JUDGE, Presiding.

13
14 APPEARANCES:

15 FOR THE GOVERNMENT:

16 UNITED STATES ATTORNEY'S OFFICE

17 BY: MIROSLAV LOVRIC, AUSA

18 Binghamton, New York

19
20 FOR THE DEFENDANT:

21 BRUCE BRYAN, ESQ.

22 Syracuse, New York

23 VINCENT ACCARDI, ESQ.

24 Binghamton, New York
25

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1 THE CLERK: United States of America versus
2 John Puglisi, 2009-CR-75. Please come forward and state
3 appearances for the record.

4 MR. LOVRIC: Miroslav Lovric for the
5 government. Good morning, your Honor.

6 THE COURT: Morning, Mr. Lovric.

7 MR. BRYAN: Morning, your Honor. Bruce Bryan
8 and Vince Accardi for the defendant, John Michael Puglisi.

9 THE COURT: Morning, Mr. Bryan; morning,
10 Mr. Accardi.

11 MR. ACCARDI: Morning.

12 THE DEFENDANT: Morning.

13 THE COURT: All right. The Court has received
14 and reviewed the presentence investigation report, briefing
15 from both sides as to the issues involved in this case, a
16 number of letters from family of Mr. Puglisi's and friends
17 from people in the community and people in his line of
18 employment supervisors, as well as other people and the Court
19 has reviewed each and every letter. They're pretty
20 consistent but they're pretty insightful too. They gave me
21 another look at Mr. Puglisi and what he was all about, apart
22 from this case, which I think is important for the Court to
23 know in the sentencing process.

24 So let me ask, Mr. Accardi, or Mr. Bryan,
25 whoever wants to field the answer to this question: Have you

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1 had an opportunity to review the presentence investigation
2 report with Mr. Puglisi?

3 MR. BRYAN: Yes.

4 MR. ACCARDI: Yes.

5 MR. BRYAN: Both have.

6 THE COURT: You going to do this in harmony?

7 MR. ACCARDI: I started with it and then
8 Mr. Bryan also had an opportunity to review with him, as
9 well.

10 THE COURT: Mr. Puglisi, did you have a chance
11 to read the report yourself?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you have an opportunity to
14 talk it over with your attorney --

15 THE DEFENDANT: Yes.

16 THE COURT: -- Mr. Bryan or Mr. Accardi?
17 Either one of you want to discuss anything about the factual
18 content of the report?

19 MR. BRYAN: No, your Honor. We had two minor
20 clarifications and that was all set forth in the addendum.

21 THE COURT: All right. And they've been
22 satisfied. Miss Kaulakowski worked with you and you got them
23 worked out?

24 MR. BRYAN: Yes, your Honor. They were really
25 more additional information to provide.

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1 THE COURT: All right. How about you,
2 Mr. Lovric?

3 MR. LOVRIC: We have no objections to the
4 report.

5 THE COURT: Mr. Puglisi, any objection to the
6 factual content?

7 THE DEFENDANT: No, sir. No, sir.

8 THE COURT: The Court's going to adopt the
9 factual content by a preponderance of the evidence.

10 What would you like to say on behalf of your
11 client before I sentence him?

12 MR. BRYAN: Well, your Honor, I'm assuming you
13 would like to first go through the guidelines, you know, we
14 have certain objections. I'll be brief.

15 THE COURT: That's the first thing we have to
16 do, go there first, that would be great.

17 MR. BRYAN: Okay. Yes, your Honor. Well,
18 we've raised three objections. I'm just going to be brief
19 and that has to do with an enhancement for use of a computer
20 or interactive computer service. And the essential thing
21 that we're saying there, we're not contesting the application
22 of that enhancement on the guideline calculation or for the
23 enticement charge. We're saying that it does not apply to
24 the guideline calculation for the production or attempted
25 production and attempted possession of child pornography and

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1 the reason basically for that is those charges are predicated
2 on some text message that occurred in a couple of days. They
3 happened when Mr. Puglisi was in his home and the victim was
4 in her's. It was accomplished by cellphone, ordinary
5 cellphone use, which can communicate by radio signal text and
6 pictures. And we respectfully submit that's not use of
7 computer or interactive computer service.

8 THE COURT: All right. Mr. Lovric, what's
9 your position on that?

10 MR. LOVRIC: Judge, our view is that the
11 guideline provision for that enhancement is written, in fact,
12 in very broad terms. It simply and primarily states that
13 there was a use of a computer. When applied to the facts of
14 this case, we believe that the guideline provision is
15 applicable for a couple of reasons. One, the communications
16 at times occurred over the use of a computer. Granted the
17 defendant may not have been using his computer to communicate
18 with the minor but the minor at times was utilizing a
19 computer to communicate with the defendant on his cellphone.
20 We think that in and of itself triggers the application of
21 that provision in that a computer was used. I disagree with
22 the defense that the -- that usage of the computer has no
23 bearing on the production or attempted production. In our
24 view it does because, as the Court may recall, the production
25 or attempted production of images in this case almost

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1 directly stemmed from the communications that were occurring
2 between the defendant and the minor. It was through those
3 communications that the defendant was asking for pictures to
4 be taken and commenting on pictures that were taken by the
5 minor.

6 THE COURT: That was done by cellphone.

7 MR. LOVRIC: The defendant was on his
8 cellphone but at times the minor was on the computer. My
9 point is that there is relevance to use of a computer and the
10 attempted production of images because the communications
11 that were occurring between defendant and the minor, those
12 communications specifically at times led to these photographs
13 being taken, not that the computer was used to take them or
14 to store them but I don't think the guidelines require that.
15 So our position is that it's applicable.

16 THE COURT: All right. The Court believes in
17 this case that as far as the enticement portion is concerned,
18 that the computer use application should apply but not as far
19 as the production is concerned, so I'm going to reduce two
20 points off the total score.

21 MR. BRYAN: Thank you.

22 THE COURT: What's the next point?

23 MR. BRYAN: Next, your Honor, is the
24 application of a two-level enhancement for supervisory
25 control. And, again, it's a very similar argument. Your

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1 Honor, there's very little case law. There's only one case
2 that I found on this and the guideline itself says teachers
3 do fall within this but the -- there's a Third Circuit
4 opinion and it is dicta, but it says that it's not a
5 guideline that applies at all times but it's a situation
6 which the supervisory control is occurring when the criminal
7 conduct occurs.

8 So our argument is that as far as -- we're not
9 contesting the enticement. It's the production or attempted
10 production and possession and there it's happening at night.
11 He's in his apartment, she's at her home, and he's not acting
12 in his role as a teacher at that time, therefore, the
13 supervisory control enhancement should not apply we say to
14 the guideline calculation for the attempted production.

15 THE COURT: All right. Mr. Lovric.

16 MR. LOVRIC: Judge, our view is you can't
17 really parcel out particular acts day by day or hour by hour.
18 In our view, you have to step back and look at the totality
19 of the relationship between the victim and the defendant and
20 not just at the exact moment that either production or
21 attempted production occurs. When you did that, in our view,
22 there's clearly a supervisory relationship and control. The
23 defendant in his position as a teacher, as a mentor, at the
24 school and in all of the times that he is communicating with
25 the minor at school, I don't think it's a stretch to say that

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1 a lot of that activity that occurs when there is a
2 supervisory relationship in play lends to the fact that then
3 it's easier for the defendant to have the minor do what he
4 asked her to do, which was the taking of these photographs
5 and the attempted production. So, in our view, it's
6 something that has to be looked at in the totality, not just
7 the incident or moment that an image is either produced or
8 attempted to be produced.

9 THE COURT: Well, recalling back to how these
10 events first started, when the young lady in question, the
11 victim came into Mr. Puglisi's class together with another
12 young lady and there was interaction between the three of
13 them and then finally there was more intense interaction
14 between the victim and the defendant, the Court doesn't feel
15 there's any way that the victim could not have realized at
16 all times that Mr. Puglisi was in a supervisory or teaching
17 position and that in my mind influenced the course of conduct
18 that resulted in the pictures and the other conduct so I
19 think it's applicable and I'm going to score it.

20 What's the next one?

21 MR. BRYAN: Yes, your Honor, and the last one
22 is there's an enhancement for obstruction of justice. And
23 two facts pointed out in the presentence report here, one is
24 that he deleted text messages from his cellphone and the
25 other is that after learning of this investigation, he asked

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1 for the cellphone back. It's very simple what we're relying
2 on the burden of proof. We're saying, yes, those facts
3 occurred but there's not enough evidence, we've said that,
4 demonstrating a specific intent to obstruct justice. The
5 cellphone, deleting text messages, I don't think there's
6 really evidence of when that happened and people delete
7 messages over time.

8 I think the harder one for us, frankly, is
9 asking for the cellphone back. And our simple, you know,
10 asking the Court to review that, you know, there's just
11 simply no evidence what happened with the cellphone. Simply
12 wasn't recovered. He asked for it back. I think what
13 happened here is that, you know, the police come in, or they
14 talked to the wife, they go to the school, they're
15 interviewing and this is on the same day and then the request
16 for the cellphone comes and it's brought to his classroom. I
17 think he's arrested the same day so it's, you know, how can
18 you say he was trying to destroy or conceal this. It just
19 simply wasn't recovered.

20 THE COURT: You know, you're right, in one
21 respect there's no direct evidence of what happened but I
22 think there's pretty strong circumstantial evidence that the
23 Court has to take a look at.

24 MR. BRYAN: Yes, your Honor.

25 THE COURT: So, Mr. Lovric, did you want to be

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1 heard on that issue?

2 MR. LOVRIC: Judge, in our view this is, I
3 think, the easiest of the three issues. There's really no
4 question the defendant took that phone back from the victim
5 because he knew that the police had been alerted and were
6 involved and that he did it so that he could remove from her
7 the instrument that he had been using to communicate with her
8 and the instrument that was used to take photographs that
9 were sent to him.

10 On that day the police went to interview his
11 wife and she tipped him off and that fact came in evidence.
12 There were actually texts and also the victim testified that
13 the wife called her and notified her that she was aware of it
14 and that the defendant told the victim that the wife told him
15 that the police were involved. The police had no intention
16 of arresting him that day. In fact, the reason they went to
17 arrest him was because they learned that he had been tipped
18 off so they arrived a few hours later. But the recovery of
19 that phone in and of itself in taking it is obstruction
20 because he does it for one reason only, because he's been
21 tipped off that the police are aware and investigating. He
22 doesn't do it because he's ending the relationship. He
23 doesn't tell the victim, you know, this is a mistake, I
24 shouldn't have done this. This is over between us. He does
25 it for one reason; that is, because the police are not

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1 involved and he concludes correctly they will at some point
2 come to look for that phone.

3 THE COURT: All right. Well, the Court thinks
4 that the enhancements correctly applied for the reasons that
5 I think and there is strong circumstantial evidence. The
6 purpose for retrieving the phone was to prevent it from
7 falling in the hands of the authority and that's what it
8 seems to me happened.

9 Where that leaves us is that even though
10 initially the probation office and the Court did agree that
11 the total offense level is a 40, the Court doesn't believe
12 that to be the case, you know, because in holding that the
13 two points did not apply to the production count.

14 I think the total offense level will be a 38
15 and instead of a guideline range of 292 to 365, the Court's
16 going to find that the correct guideline range with a 38,
17 criminal history category of 1, is not 292 to 365 but is 235
18 to 293. So, having concluded the guideline calculation,
19 let's get to the real issues in this sentence.

20 I'd like to hear, Mr. Bryan, what you have to
21 say on behalf of Mr. Puglisi with respect to what sentence
22 the Court should impose in this case?

23 MR. BRYAN: Yes, your Honor. And first we
24 want to thank the Court for, you know, the thoroughness and
25 effort the Court has looked at this case and how you have

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1 looked at and you are looking at this case individually. We
2 sincerely appreciate all of your effort. And just a starting
3 remark, we've got a guideline calculation here but we've
4 got -- these child pornography guidelines are a problem and,
5 you know, they're called fundamentally different. They're
6 not based on an empirical study. So one thing to simply say,
7 we've gone through what we had to go through here on, you
8 know, what the guideline calculation should be but in terms
9 of the real sentence here, based on the actual facts, as it
10 should bear on a sentence, is these guidelines are not
11 helpful. You know, in terms of giving guidance in this --
12 and particularly this case, we've outlined in our memorandum
13 to the Court a number of mitigating factors here that we
14 submit are a very strong basis, we contend, for leniency in
15 sentencing and we understand the -- we believe that based on
16 the facts in Mr. Puglisi's situation that -- if we were to
17 say without the statutory minimum what would be a sufficient
18 but not greater than necessary sentence based on these facts,
19 the sentence should be substantially less than 15 years and
20 we do have a constitutional argument before the Court. What
21 I will do is address the factors. If the Court should rule
22 that it's compelled to find the statute constitutional, we
23 respectfully submit the Court should give a lesser sentence;
24 then this is a case that shouldn't have anything more than 15
25 years.

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1 The first thing -- as I came into the case and
2 my discussions with Mr. Accardi and looking at the facts here
3 that I started with is that we're dealing with a situation of
4 a good man, proven over his life time, who had a bad period
5 of time and that had to do with events that happened in his
6 life that for him caused him to have what's diagnosed as an
7 adjustment disorder with depression and this is not
8 something, you know, even -- this is really undisputed,
9 unquestioned that this happened. The proof is there. It's
10 in the mental records. He went in 2008. This is before the
11 events that are the subject of this case. Went to his doctor
12 and his doctor diagnosed him with that and he was suffering
13 very severe symptoms. Low self-esteem, manic episodes,
14 suicidal ideation, and impending doom. I can go on with the
15 list. He went to two doctors. It was documented,
16 unquestioned. He was suffering from a disorder, a
17 psychological disorder, and these are all effects, you know,
18 the medical literature on this, what that disorder can do to
19 a person fit like a road map of what then happened here. One
20 of the things is, you know, a normal person can start to
21 engage in destructive behavior including criminal behavior
22 and that is what happened. He's never denied that he -- he's
23 responsible for an illegal sexual relationship with a girl
24 who's not 17 years of age.

25 So, here I'm not going to go into detail about

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1 what -- other than to say in terms of what was it that was
2 the cause here. A failed marriage, separation from his
3 children and then -- and then, you know, a circumstance which
4 I will not go into in detail also occurring. And, you know,
5 in thinking about this, Judge, you know you get -- your years
6 in sentencings seem to go on. I've been an attorney for 30
7 years. One thing I can say, you know, you get hit. One
8 thing I know about life is everybody has their breaking
9 point. Everybody. Now, we all don't have the same breaking
10 point. We don't have the same things that can break us and
11 hopefully we don't get hit with that thing that can break us
12 but he got hit with that thing that could break him and it
13 broke him and that's what happened here. So, the Supreme
14 Court has said, you know, you know, this sort of a mental
15 diminishment, diminishing capacity is inherently mitigated
16 and, therefore, this is a very important factor I would
17 respectfully submit in leniency in the sentencing in
18 consideration. He has said I deserve punishment. He's
19 now -- fortunately about the condition, the literature says
20 it's a temporary thing. Once the stressor, you get over the
21 stressor event, he's over it, he's now able to look back, my
22 God, what did I do? And the other thing you would have to
23 say -- anybody who knows him, you look at everything, had he
24 not gone through this, there's no way in the world that this
25 man would have engaged in that conduct but for he went

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1 through that event and it had its effect. So, the question
2 is not punishment but the degree of punishment and it's a
3 very important mitigating fact for giving leniency in this
4 case.

5 The other thing, your Honor, you're a very
6 experienced Judge and, you know, it's an unfortunate thing
7 that these child pornography cases are becoming so much more
8 to the Court and to courts. But one thing that the Court has
9 seen and the cases are showing is that the typical child
10 pornography cases and the typical defendants in child
11 pornography cases exhibit common characteristics and so one
12 thing you'll see and, by the way, this is -- it's not just,
13 you know, in the case law but, you know, there's an FBI
14 expert, I read the article on. This is what's common. They
15 maintain large collections, large, you know, hundreds,
16 thousands of pictures. They're obviously demonstrating a
17 problem and the big problem with these -- the typical cases
18 and greatest concerns about these cases, not only punishment
19 for what they've done but the concern they could go out and
20 do it again. That is a problem. Society has a real concern
21 over that. The question is that this case? We're saying
22 absolutely not this case but the typical case is that you're
23 going to see large collections which means that this person
24 has then a history of, you know, long behavior. Maybe even
25 prior convictions but certainly long-documented behavior

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1 going back which is again indicating there is going to be a
2 problem going forward. Things of this nature and while --
3 multiple victims is another thing, age of the children, very
4 young. All of this. It's just none of that is present here.
5 This is one of these cases that's truly apparent. This was a
6 good man, great man. You look at his background, hit a
7 horrible time in his life. Went through a psychological
8 disorder and then committed criminal behavior during that
9 time and he's out of it. So, risk of recidivism I would say
10 is almost nil.

11 We do have Charles Kramer who we brought in
12 also to evaluate him, very well versed in this area and said
13 this is not a man who has any of these problems that are
14 typical. So there is no deviant sexual interest in children.
15 There's none of that. We don't have that risk going forward
16 with him.

17 The other thing I think that's unusual about
18 this case, you know, there are so many letters. One thing
19 that impresses me, so many letters, and it does -- the
20 consistency then shows proof of truth too. You know, and you
21 have the community saying this man is not that man and
22 they've said repeatedly this is uncharacteristic. They don't
23 excuse his behavior at all. All the letters say that but we
24 want you to know that he is not that man generally. But I
25 think the one that strikes me, not to discount any of this,

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1 is the victim's mother. I mean, you at sentencing, you know,
2 how often is it that, you know, it's the victim or someone
3 for the victim saying this is terrible. You know, you have
4 to go hard here. This -- if there was a person who would say
5 go hard, it would be the victim's mother. Victim, of course,
6 says not at all, but the victim's mother. If there is anyone
7 who would say -- who would have the least, you know, sympathy
8 for him would be the victim's mother. And the victim mother
9 has said 15 years is far too harsh. I know the facts of
10 this, that's far too harsh. I don't excuse him but it's too
11 harsh so I think that that's something also here.

12 Now, there are a number of things -- I'll run
13 through them just to show, you know, to repeat really that
14 this is not your typical child pornography case. This was
15 again consistent with his vulnerable state, you know, the
16 relationship was not solely sexual. It was companionship,
17 friendship. It turned sexual. There was only a small
18 percentage of conversations by text that were sexual. This
19 was an attempt, you know. There were no nude photographs
20 that were transferred. Ordinarily under -- yes, it is as
21 much under the federal statute it is conviction of the crime,
22 but if you look at state jurisdictions and, you know, usually
23 attempt is treated more leniently than commission. This was
24 never -- if photographs were ever sent, if they would have
25 ever been sent, they certainly would have never been

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1 disseminated. That is a concern about whether photographs
2 get out there. They meant to keep this secret.

3 The sexual relationship -- actually
4 companionship and then sexual relationship really came first
5 before the, you know, the texting that was the subject of the
6 criminal charges and the alleged request and, you know, the
7 Supreme Court -- reminds me of a case, I think it's McMillan
8 versus PA -- this was a pre-Apprendi case -- but sort of
9 leading to Apprendi. In it we have the greatest concern or
10 we have great concern about cases in which the tail was the
11 dog, and so the dog is really -- what's the primary case?
12 What's it really about and then is there something ancillary
13 or secondary, it's there, but that second thing is driving
14 the harshest punishment. And I respectfully submit that's
15 this case here. You know this was illegal, rape in the third
16 degree because of the age and then during the process of
17 this, texting happened and yet the punishment that's being
18 driven is the texting later. So without -- and by May -- we
19 completely accept what the jury has said. We're not
20 discounting what the jury has said.

21 Now, looking at the whole picture because the
22 state conduct would be punished far less severely and yet
23 it's the main driving force of what happened here. Short
24 duration of federal conduct. It was less than two months of
25 texting. Couple days where these alleged requests happen.

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1 No other victims. Presentence report has said that
2 Mr. Puglisi should receive and the Court has given the
3 acceptance of responsibility adjustment and that reflects --
4 this is a man who right away said I did it. I'm sorry. I
5 think as he came along and as he's getting out of this, you
6 know, being able to reflect back and he's getting out of this
7 disorder, he has someone -- he has deep, deep regret about
8 what has happened here. Deep, deep remorse. You know, if he
9 was able to take it, he would obviously.

10 I think what says a lot too here, when I came
11 in the case I started to find out something about what was
12 going on and I find out -- I learn that he's doing this --
13 these incredible things in jail and it is a factor under the
14 law to see post-arrest rehabilitation and this is not a man
15 who thought he was going to get anything from it. It's his
16 intent to keep doing it while he's in prison. Tremendous.
17 You talk to the jails, they can't believe this guy what he's
18 doing for other inmates and when he goes off to prison, what
19 he'll be able to do and what he will do. He's going to do
20 it. He already did it without any suggestion and it's a
21 way -- recognizing what he did was wrong, what can I do to
22 help make amends, you know, and be productive, back to the
23 person I was, you know. So again mitigating.

24 Now, there is -- he's a teacher and we're not
25 going to gild the lily on it -- about it and that's

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1 something -- I'd simply say that -- what I ask the Court to
2 consider most is yes, but he wasn't who he was. He was
3 vulnerable. He was suffering from this disorder. Something
4 that, you know, you weigh that fact against all this other
5 mitigating facts and still this huge number, amount of
6 mitigation is something that I respectfully submit compels
7 the lesser sentence.

8 In terms of his history and characteristics,
9 we, you know, I've already said this. Obviously this is
10 aberrant behavior, no history. I don't know how much the
11 Court sees this. You know, he has -- these are teachers who
12 have taken off from work. People who don't have to be here.
13 Yes, they wrote you letters and went to great effort to write
14 you letters, but this is really putting their money where
15 their mouth is to show you that this is real. And it's a
16 judgment. I mean, why would people go this much for somebody
17 unless -- and these are people who know him most. This is
18 the community, it's not just family. If he was not this
19 great person, teacher, upstanding person in the community,
20 charitable works, all of those things, you know, knowing that
21 he had done something wrong that any one would say -- and
22 they say is wrong and they don't diminish it but to say
23 unbalanced and looking at the whole picture, that this is a
24 man who deserves that leniency and so much so that, you know,
25 they're trying to show the Court he is someone who deserves

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1 leniency.

2 And just so -- the last thing is I asked you
3 to consider, you know, in getting the facts here to present,
4 I got to know the family a bit and it's an unusual family.
5 Unusual in a sense is one of those great families that you
6 see out there. You wish more families were like this and,
7 boy, the support. The talking every day -- they visit every
8 time they can. Judge, when he goes off to state prison --
9 and just to ask the Court to recommend a prison as close,
10 this is a family who will not surprise me. Every weekend.
11 They're going to wear the road out to that prison for the
12 next number of years that this Court sentences him and so I
13 ask the Court to consider the effect on them and on his
14 children.

15 Outside of this thing, father -- he was, you
16 know, great to these children. His wife's first child and
17 the child looks at him, you know, it's devastating to the
18 child, you know. So to give these people time with him, his
19 parents, before they pass on, his children at least, you
20 know, at some point to resume a relationship, this is a
21 situation where I ask the Court to consider those things.

22 Those are the mitigating facts I ask the Court
23 to consider.

24 THE COURT: All right. Thank you, Mr. Bryan.
25 Mr. Lovric.

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1 MR. LOVRIC: Judge, briefly but I do need to
2 address a few of the different components of the sentencing
3 procedure today.

4 THE COURT: Sure.

5 MR. LOVRIC: Prior to coming here today, I've
6 been in touch with the victim's mother and she indicated to
7 me that she was not going to be able to be here but she sent
8 me a letter that she asked me to read to the Court and I
9 promised her that I would read it so I would like to do that.
10 And just for the record the victim is in the courtroom today.
11 I've asked -- I've had someone ask her if she wanted to
12 speak, she indicated no but, as the Court knows, she does
13 have the right if she wants to address the Court.

14 THE COURT: That's true.

15 MR. LOVRIC: The Court has seen and heard her
16 in that she testified at the trial but I just want to make
17 sure the Court is aware, you know, we have presented her the
18 opportunity and advised her that she's entitled to speak here
19 today.

20 THE COURT: Okay.

21 MR. LOVRIC: The victim's mother sent me the
22 following letter that I'd like to read into the record, if I
23 may.

24 THE COURT: You may.

25

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1 MR. LOVRIC: It reads: As parents, we're
2 legally obligated to make sure that our children are
3 educated. This is a non-negotiable mandate and most parents
4 are left with only one option, the public school system.
5 Once our children leave our care and are in the hands of the
6 educational system, we are given no choice but to believe
7 that they're being kept safe and out of harm's way.
8 Naturally, the teaching professionals are set -- are set to a
9 very high standard. They're meant to teach and guide our
10 children on a path to their becoming bright young adults.
11 They're meant to be mentors and character builders. They're
12 meant to provide an environment of trust. They're expected
13 to strive for academic success in their students. They're
14 supposed to protect them. They're supposed to watch over
15 them. Mr. Puglisi showed blatant disregard for all the
16 standards to which his profession held him. He ignored every
17 moral, ethical, and professional choice he could have made
18 and chose to do the opposite.

19 With that said, Mr. Puglisi is facing a
20 possible sentence of 15 to 30 years in prison. I'm not
21 attempting to say that I understand the complexity of the
22 law; however, even at this time of trouble I can certainly
23 see the unbalance in the justice system. Putting this in a
24 deeper perspective, my father was hit and killed by a drunk
25 driver in 2005 in Onondaga County while walking his dog. The

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1 man that hit my father and then drove away never touched his
2 brakes. He had been drinking. He had three prior-related
3 convictions and was still able to carry a New York State
4 license and operate a motor vehicle. That man was sentenced
5 to only six years in state prison. Of those six years, he
6 served only four. He was given two years of probation. This
7 man is out today walking the streets and this is to be the
8 justice for my father's life.

9 It is my feeling that all charges against
10 Mr. Puglisi are warranted, with the exception of one specific
11 charge. It is my firm belief that the federal pornographic
12 charge should have been dropped during the trial. It seems
13 that the law was manipulated and bent to fit this case
14 specifically in that regard. I say that because no photos
15 were ever listed -- no photos were ever listed into evidence
16 and the jury convicted him of this charge based on assumption
17 of specific text taken out of context. In my mind, this
18 leaves only questions and doubt. There were no pictures and
19 with that said, right or wrong, there should be no
20 pornography charges.

21 Based on the factual evidence, if Mr. Puglisi
22 is sentenced to the minimum of 15 years, it would be five
23 years longer than what is truly right and justified.
24 Emotions aside, I'm convinced that a ten-year sentence is
25 completely acceptable and reasonable based on the facts of

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1 this case. Any additional time over a ten-year sentence is a
2 truly miscarriage of the legal system in my opinion. For
3 myself it comes down to simply -- down to simply to what is
4 right and what is wrong and its signed by Miss Susan Schwenk
5 who testified before this Court.

6 THE COURT: All right. The Court recalls.

7 MR. LOVRIC: Judge, if I may. If I can
8 address several of the different components and issues in
9 this case. First, I know the defense has had an argument and
10 a motion that the Court should set aside the statutory
11 sentencing structure, the mandatory minimum in this case. I
12 know we had a brief discussion before coming to Court. The
13 government's view is the following on that: The statutory
14 minimum and maximums here, as in all cases, were set by
15 Congress. They are statutory. They do not in any way have
16 the same component, discussions that are occurring now in the
17 courts as the guidelines are.

18 In this particular case, this statute and
19 these statutes that Mr. Puglisi was convicted of have
20 uniformly and consistently been upheld by the circuit
21 courts as being Constitutional. I believe they've been
22 attacked in pretty much every avenue as far as
23 Constitutionality and including, I believe, Eighth Amendment
24 attacks. That being said, as much as anyone may think that
25 the statute, either in this case or otherwise, is in some way

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1 unfair or in some way not applicable, in our view the fact of
2 the matter is this statute has to be applied, it has been
3 upheld and until some either circuit or US Supreme Court says
4 otherwise, it is a constitutional statute. So in that
5 respect, we ask the Court to make that finding and to reject
6 the defense motion that the statute be found unconstitutional
7 as it applies to Mr. Puglisi.

8 Mr. Puglisi, as the Court knows, is facing
9 under the three counts, count one, the 15 to 30 year
10 mandatory minimum/maximum. Count two, ten years to life and
11 then count three, a ten-year maximum with no mandatory
12 minimum.

13 I'd like to address one area that there was
14 some discussion and there has been before this Court when it
15 comes to the federal statutes and the state statutes.
16 Defense has made an argument under New York State Law the
17 punishment would be much, much less harsh for this type of
18 conduct and I've said this before, Judge, and I don't
19 apologize for it. New York State is an absolute
20 embarrassment when it comes to the criminal statutes. The
21 New York State Legislature has been doing absolutely nothing
22 when it comes to protecting rape victims and children. I
23 used to be a New York State prosecutor and I recall cases
24 where someone was forcibly raped under extreme physical harm,
25 an unimaginable type of act, and under New York State Law

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1 many of those rapists would get three to nine years. Five to
2 15 years indeterminate. Children who are sexually abused by
3 their parent, by their guardian, getting weekends in jail,
4 probation. New York State should be absolutely ashamed of
5 itself and New York State Law is an absolute joke.

6 That being said, I don't believe it's correct
7 to, therefore, compare the federal statutes to the lame
8 New York State statutes. It's not fair to compare the fact
9 that the New York State statutes do not find it fitting to
10 punish people who commit horrific sexual crimes and then to
11 say the federal statute ought to do the same. This is turning
12 justice upside down and on its head. What New York State
13 needs to do, in addition to passing a budget, they need to
14 get their act together and pass statutes that protect people
15 that are sexually abused. That's what needs to happen, not
16 that the federal statute somehow now have to come in
17 compliance with state law.

18 While preparing for this case, Judge, I read a
19 case actually and I'll cite it for the Court because I just
20 want to make sure the Court knows where I got this quotation.
21 It's United States District Court case out of Ohio, US versus
22 Cunningham, 680 F. Supp 2nd 844. And the interesting part
23 about this case for me when I read it was the following: The
24 Judge in that case -- it was a child pornography case but
25 factually different than this case so it wasn't the factual

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1 part that caught my attention. But the Judge quoted a world
2 leader as one saying the following: There can be no keener
3 revelation of a society's soul than the way in which it
4 treats its children. That Judge attributed that quotation to
5 Nelson Mandela. And when I read that, part of what that
6 quote means to me and what I think it means in this arena is,
7 I think we are losing. We're losing in this society, I think
8 in the world, we're losing our soul as the Judge put it.
9 When you think about it, what's the most important thing that
10 the criminal justice system can deal with? And the most
11 important thing we can deal with is protection of minors.
12 Granted, violent crime, gangs, drugs, they all impact our
13 society. They all impact our way of life day to day but I
14 think all of us would agree that the biggest impact that any
15 criminal statutes can try to address is what happens to our
16 minors. What happens to the children? What happens to the
17 people that are really not capable in any way of really
18 protecting themselves and in many ways I agree with that
19 quotation and with what that Judge said in the case, in his
20 opinion, which is our country and our world is losing its
21 soul. We're losing our soul because we're failing to protect
22 minors. We're failing to protect the people that can't
23 protect themselves. It brought to my mind -- it brought
24 things of what we used to do, 20, 30, years ago. And we do
25 still some today. In school, in DARE programs, every way

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1 that we can. What do we teach our kids today, whether they
2 be high school students, grade school, elementary school? We
3 teach them be careful when you have go out to the parks. Be
4 careful when you're by yourself. Stay away from the creepy
5 looking people. Stay away from those people that want to
6 come up and talk to you or want to give you something or want
7 you to go help them to search for their dog. We teach these
8 kids -- and today with the internet, high schoolers, we teach
9 them stay away from the chat room. There's a lot of people
10 there who aren't what they represent and we've done that
11 consistently. What have we also done consistently? What do
12 we tell children, minors, high school students, grade school
13 students? Who do we tell them to respect and to listen to?
14 Listen to your teachers. Listen to the police officers.
15 Listen to your counselors. We put these people on a pedestal
16 and, in fact, we tell them these are the people you should
17 listen to. These are the people that you should have guide
18 you, to help you get through life, to keep you safe. These
19 are the people that if you have problems go to. And the
20 problem, Judge, is that we see it more and more now in this
21 courtroom. We see teachers being prosecuted. We see coaches
22 being prosecuted. We see prosecutors being prosecuted. We
23 see judges who commit these crimes. We see the people we've
24 always elevated and told children to respect and to look up
25 to. We see more of these people violating that oath and that

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1 trust. A few years ago I remember reading an article where a
2 federal prosecutor from Florida was caught in an FBI sting
3 trying to pay a fictitious undercover FBI agent out of
4 Chicago the right to have assess with a five-year-old minor
5 and the federal prosecutor flew from Florida to Chicago, I
6 believe, thinking he was going to meet this woman and have
7 sex with this five-year-old girl. It is mind boggling --
8 it's mind boggling as to what is happening today and what
9 we've always consistently tried to keep our kids safe from.
10 We no longer can tell our kids watch out for creepy old men
11 near the park. Watch out for those people that want to give
12 you candy and lead you away. The world has gotten too
13 complicated with these sexual offenses and my point to all of
14 this, Judge, is that Mr. Puglisi -- and I'm not here to
15 render any broad judgments. I'm here to simply address what
16 he did. I'm not saying that he is some monster. I'm not
17 saying that he hasn't been a good person and done a lot of
18 good things. I think those are absolutely true things but
19 what happened here is extremely, extremely difficult to
20 comprehend and it is really very wrong in terms of what he
21 did with this minor. And the reason for that is, and Miss
22 Schwenk says it to a certain degree, he was one of the good
23 guys. He was supposed to be protecting, mentoring, being a
24 guide post. He was supposed to make sure that something like
25 this didn't happen to this victim or to any other kids at the

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1 school and that's why this is so serious because he was one
2 of the good guys. He was one of the people that the school,
3 society, parents, community expected more of. In fact, they
4 sent him the kids, not literally, but he's a part of the
5 program where kids were sent in order to get them through
6 these difficult years of adolescence and teenage years. And
7 that's why I go back, that's why this is so serious. If
8 Mr. Puglisi was not a teacher, and he was just some regular
9 person, truck driver or salesman or lawyer, it would be
10 different. But in his position, most of all, he is held to
11 this higher standard and the reason is these kids, and they
12 are kids regardless of what they think they are at the age of
13 16 and 17. These are nothing more than kids and the victim
14 here, I know how she still feels about him and I've said this
15 in the past in these kinds of cases. I feel very sorry for
16 her today because she doesn't think so and she thinks that we
17 are all out of our minds but she, to this day, is victimized.
18 She doesn't understand and I predict somewhere in her life,
19 many years down the road she will understand what an impact
20 this has on her and on her future relationships and her
21 future way of looking at life. But she doesn't see that
22 today. And I think that's very sad because the fact of the
23 matter is, at some point in her life I think she will get hit
24 with a ton of bricks when she realizes and puts all of this
25 in perspective.

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1 I don't disagree that Mr. Puglisi has done
2 many wonderful things in his life. I do disagree with the
3 fact that, to some degree, the defense has portrayed this as
4 a bad period in his life. Did he go through a bad time in
5 his life? Absolutely. His marriage, the things that come
6 with marriage and children. Those are difficult things for
7 any person to undergo. But to say that that translates into
8 some type of a syndrome I believe is simply incorrect and
9 inaccurate. I respect the defense's expert review. The fact
10 of the matter is, Judge, in our view he had a difficult time
11 period that he was undergoing, but that doesn't explain or in
12 any way justify the repeated actions that he took in the
13 course of this relationship with this minor. I mean, if we
14 look back at the evidence, this was over many, many weeks,
15 perhaps as long as a two-month period. He bought her
16 different cellphones. The school actually confronted him
17 about three weeks before his arrest and he knew that the
18 school knew there was something going on and he buys her a
19 different phone so they can continue communicating and, in
20 fact, that's when most of the photographs are taken by the
21 minor and sent to him is after the school has a talk with
22 him. He sends the mother this fictitious e-mail that he and
23 the victim concocted this story. It's not aberrant behavior.
24 It's just repeated behavior. I'm not here to try to
25 characterize why he did this. I do believe in many respects

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1 a great deal of this activity had to do with sexuality. He
2 was attracted to this girl. She was attracted to him. The
3 opportunity presented itself and Mr. Puglisi took that
4 opportunity.

5 The rest of it, Judge, kind of reminds me,
6 many years ago I remember I used to watch 60 Minutes quite a
7 bit back when the show I think was a little bit more
8 realistic and Andy Rooney had this piece on which I thought
9 was kind of interesting and it was a piece on how our society
10 today has become, it's not my fault. And he goes on to
11 describe how when children do poorly in school, well, it's
12 the teachers. They're bad. They're not doing their job.
13 They must not be doing it right or when someone gets fired,
14 well, it's my employer. They're discriminating against me
15 because I'm big, short, fat, skinny, I'm black, white or this
16 or that. And he went on with this piece and there's some
17 truth to that I think. In the society today we're so quick
18 to say it's not my fault, I had this problem or I have this
19 problem or it was this that caused me, and we've had some
20 bizarre even defense tactics. The Twinkie defense, the sugar
21 defense. And, you know, Judge, I just think Andy Rooney had
22 it right, which is we're blaming everything and everybody
23 except ourselves. We just don't take responsibility for
24 anything. Do we make poor choices? Absolutely. Did
25 Mr. Puglisi make a poor choice? Absolutely. But it's his

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1 responsibility. His marriage failing didn't cause him to do
2 this. His marriage problems didn't cause this to happen. He
3 decided that he wanted to have a relationship with this
4 underaged young girl. He made a big mistake, period. That's
5 all it is. Instead of saying, well, you know, it's really
6 this syndrome and this other thing that the doctors believe.
7 I just simply think that we are too quick to say it's not my
8 fault entirely or it's my fault a little bit but not the
9 whole thing. It just reminds me of when you're a kid. Your
10 mother blames oh, it's the other guys or it's the other group
11 of kids, that's why my Johnny got in trouble. It's not
12 Johnny's fault. We're always looking for this other group of
13 kids. You know, where are they? We never seem to find them.

14 Judge, I don't think Mr. Puglisi is any
15 monster and far from it. I've prosecuted people that I truly
16 believed were monsters and I think this Court has seen a few
17 of them and Mr. Puglisi is not in that category and nobody is
18 saying that. He has a lot of good qualities. He has a lot
19 of things that he's done very, very well in life. And
20 there's a lot of good people that stand behind him. But the
21 point here today is to balance what he did in this case and
22 who he is in his entirety and totality as a person and that
23 unfortunately, Judge, is your job. I'm not here to try to
24 convince this Court that this man deserves the maximum
25 penalty. I don't believe that's the case. The fact of the

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1 matter is there has to be a balance and the balance has to be
2 with the egregious crime that he did commit and it's the
3 Court's function to deter not only Mr. Puglisi, other people
4 like him, other teachers, other people that are in his
5 position to make sure that Mr. Puglisi and other people are
6 deterred hopefully and understand that this kind of event and
7 crime will be dealt with harshly. Not overly harsh but will
8 be looked at harshly because our number one priority is to
9 keep minors safe and keep them from being manipulated and
10 used by adults.

11 And so, Judge, I do rely on all the other
12 materials we have submitted to the Court, our sentencing memo
13 and most importantly, Judge, you heard the evidence and the
14 testimony and I think the Court has all the facts before it
15 to render a fair and just sentence.

16 THE COURT: Mr. Puglisi, would you like to be
17 heard?

18 THE DEFENDANT: Briefly, sir. Right now I
19 just want to say I'm sorry.

20 THE COURT: Okay.

21 THE DEFENDANT: I hope, your Honor, that you
22 got the letter that I wrote.

23 THE COURT: I did.

24 THE DEFENDANT: I just want to say that I am
25 sorry. I certainly regret all the pain that I've caused all

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1 the people in this courtroom, all the people behind me and
2 beyond. I ask that you consider -- I certainly did make
3 mistakes. I'm not making excuses or trying to shield
4 responsibility. I'm going to try do the best I can
5 regardless and I'll do whatever I can to help people in this
6 situation and beyond. I guess I'm just asking that you give
7 me a chance to do that and give me a chance to help take care
8 of my kids, help Christen out, and my parents, my family, all
9 my friends, everybody who is here with me. Just give me
10 whatever sentence you feel is appropriate. Thank you.

11 THE COURT: All right. Mr. Bryan,
12 Mr. Accardi, do you know of any legal reason why I shouldn't
13 sentence Mr. Puglisi now?

14 MR. BRYAN: None, your Honor.

15 MR. ACCARDI: No.

16 THE COURT: Mr. Puglisi, do you know of any
17 legal reason why I shouldn't sentence you now?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Well, a lot has been
20 said here in the courtroom today and, you know, it's like
21 everything else. There's truth on both sides of the
22 equation. Nothing is absolute. Things always have different
23 angles to look at them from and in this case we start off
24 with Mr. Puglisi who was a family man and had a good strong
25 family that are still behind him and supporting him. And

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1 that's a very important factor for me to consider. And I
2 think that's something that not only speaks to the past but
3 also speaks to the future, because when someone is sentenced
4 to a period of incarceration, and comes back out, if he
5 doesn't have a good support system and people that he can go
6 to, he may fall into the error of recidivism. So that's one
7 of the things the Court is considering.

8 The Court is also considering all the
9 information supplied to it about Mr. Puglisi from those
10 people who he's worked with, who he lived in the community
11 with, and who interacted with him, as well as family members.
12 Because even though the letters were in a certain sense
13 repetitive about the good qualities that Mr. Puglisi has,
14 they also were, I thought, insightful. They gave me a
15 perspective on Mr. Puglisi that I wouldn't have had if I just
16 sat in this courtroom and heard about the interaction between
17 the victim and Mr. Puglisi and that certainly didn't paint a
18 very good picture. But I don't think that's the whole
19 picture. I think the whole picture is completed by those
20 people that have spoken up for him on his behalf. I think we
21 started off with a man who has done a lot of good things in
22 the past. I won't use superlative adjectives. He did things
23 that other people don't do. For example, as I understand it,
24 what he did was when he came across students and other people
25 in the community who didn't have the basics, he took money

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1 out of his own pocket to provide those people with those
2 things that they most needed and that wasn't something he was
3 doing with an eye toward, well, some day I'm going to be
4 standing in front of some Judge and he's going to be
5 influenced by what my conduct was in the past. He had no way
6 of knowing what was coming down and I think that's a very
7 positive thing that the Court knows about Mr. Puglisi.

8 Now, we come along and he gets married and he
9 adopts the first born of his wife and then has another child
10 and the family seems to be doing well and there's no dispute
11 in this case, Mr. Lovric I'm sure will join me, in saying
12 Mr. Puglisi, except for this aberrant conduct, and I'll
13 characterize it that way, not in the legal sense but in the
14 sense that it is really aberrant from his character. He is
15 being a good father and a good husband and doing all the
16 things he should do and a good teacher. And those things are
17 going along. All of a sudden, regardless of whether or not
18 Mr. Lovric characterizes it as a causative factor, I'm
19 convinced that he would not have gotten into this situation
20 if a series of events didn't occur where his wife decided to
21 do what she did and his marriage broke up and now he's on his
22 own and I believe that that certainly can be a very stressful
23 situation, especially for somebody who was deeply family
24 oriented and Mr. Puglisi was. Some other people who didn't
25 have that orientation, that might have not been such a strong

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1 stressor. It might not have created a vulnerability for him
2 to be subject to committing criminal behavior. So, I think a
3 lot of times I read reports of psychologists and other people
4 commenting on certain behavior and characteristics and I term
5 it psycho babble. I don't think in this particular case that
6 was true. I think there was a good analysis of the fact that
7 you had a person whose conduct and behavior was exemplary who
8 then came under a very stressful situation and it affected
9 him and the symptoms were there and I agree with the medical
10 analysis in this case, you can call it a medical analysis, at
11 least the psychological analysis that did cause and
12 contributed to the cause of certain behavior in this case.
13 So, we have that situation. Then the next thing is the
14 conduct in the case. I think sitting here now -- let's see
15 I've been on the bench 24 years as of March and then 23 years
16 as a practicing lawyer, so I guess I've seen a little bit of
17 human conduct. And I think to call Mr. Puglisi a pedophile
18 in the classic sense is in error because he's not. If you
19 want to say because he had relations with a 16-year-old girl,
20 that's a definition of pedophilia. Okay. I can buy that but
21 he's not in the same class as most of the people that stand
22 here before me who have something wrong with them that they
23 are attracted to young children and even -- and Mr. Lovric's
24 correct. The 16-year-old person is a kid. I mean, they
25 don't have the full developed mature sense that most of us

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1 sometimes get when we go through life and hopefully a lot of
2 us get that. So, I'm not sentencing him in the classic sense
3 of sentencing somebody who's a pedophile.

4 I think on the other hand -- other side of the
5 equation, that Mr. Lovric is correct that a teacher is held
6 to lot higher standard and you didn't teach the young lady
7 involved in this case. She wasn't involved in your classroom
8 but I think that all students, all people in teenage years as
9 they go through maturing, I think look up to all people who
10 are labeled teachers, are called teachers and really do watch
11 what they're doing and how they do it, so they can take a
12 sense for themselves of how to conduct themselves and how to
13 behave and I think that's an unfortunate part of this case
14 because, even though there may have been a sexual attraction
15 by this young lady, you for she, I think a lot of this
16 relationship was driven by her respect for you as a teacher
17 and unfortunately you betrayed that respect. I think that's
18 one of the components the Court has to give serious
19 consideration to as I sentence you.

20 Turning for a minute to the future. What
21 you've done so far as you've been incarcerated also impresses
22 the Court that you're a good person. You've tried to do
23 everything you could do humanly possible to interact with and
24 help those unfortunate people who are incarcerated with you
25 and I think that's a natural characteristic. I don't think

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1 that's a show. I don't think you're putting that on to try
2 to get a lesser sentence. I think you're doing it because
3 that's you and the Court also respects that. And I think the
4 likelihood of recidivism in this case is very slim. When I
5 sentence people and I fear -- and I'm with Mr. Lovric hundred
6 percent on this. If I think they're dangerous to children or
7 young people in the community, I will deal with them as
8 harshly as I can given the situation. I don't feel that way
9 about you. I don't think you're a danger to go out and start
10 chasing around 16-year-old girls. I think, as Mr. Bryan put
11 it, this is an unfortunate period in your life where you got
12 involved in this conduct. I think it was aberrant behavior
13 and I think you've probably put it behind you and that's the
14 way I feel about this case so I can't consider future
15 dangerousnesses as a factor in pushing me toward a high
16 sentence. I can consider all the things we have been talking
17 about which are really 3553(a) factors, although I haven't
18 discussed them as such. I will mention it just so that the
19 Circuit feels that I understand what the statute says; that
20 the Court must sentence you in order to reflect the
21 seriousness of the conduct involved, that it was serious; to
22 deter you and other people who may be considering similar
23 conduct from committing similar crimes; to punish you for
24 what you have done and, of course, we've already pretty much
25 addressed the rehabilitation because the Court thinks that

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1 you are rehabilitated insofar as what you've done so far.

2 Now, for one moment let me just mention the
3 Constitutionality involvement. I agree with the government
4 that the statute itself on its face is constitutional and
5 I've taken a look at that and looked at the law that
6 surrounded it. Then we have the question whether or not it's
7 constitutional as applied to you and in your situation.
8 That's not just an easy question for me to decide and that
9 involves three factors that the Supreme Court has listed and
10 I'm not going to go into all of them analyzing them for you,
11 but I've considered those. I've also considered the cases --
12 now, I guess it's just been concluded in the Eleventh Circuit
13 where there was a strong argument raised about the
14 disproportionality of the conduct of the offense in the
15 sentencing imposed. What that Judge was saying who got
16 reversed by the Eleventh Circuit was, look, the facts in that
17 case should not have driven the sentence as high as was given
18 because of the statutory mandatory minimum. And that's the
19 kind of case we have here before us today. There's a
20 statutory mandatory minimum set by Congress under the law of
21 15 years and in order to give you a sentence above that, as
22 the government has advocated, for example, your guideline
23 range is 235 to 293, I would have to be convinced that your
24 conduct in this case, coupled with your personal
25 characteristics, would drive a sentence like that to protect

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1 the public and to punish you. I don't believe that's the
2 case here. As a matter of fact, the mandatory minimum in my
3 judgment, if I were free to do anything with it, is also too
4 high. I think -- I think a sentence approximating somewhere
5 in the neighborhood of eight or nine years would be
6 sufficient and not more than necessary. But Congress has
7 spoken in this area. I don't have the authority to give you
8 a sentence other than that that Congress proscribes in that
9 statute. I cannot say Congress, you're wrong, Mr. Puglisi
10 should get what I think he should get. I'm not allowed to do
11 that. That's not the law. One of the things I did do is
12 take an oath of office. When I took that oath of office I
13 swore I would uphold the law and that's what I'm going to do
14 in sentencing you here today.

15 So, there's a lot of formal language that's
16 going to come now but I think I've said to you as much as I
17 can say about how the Court feels about what happened in this
18 case. I agree with Mr. Lovric that the victim doesn't
19 realize that she is a victim. I also agree that later on in
20 her life perhaps the realization will come to her when she
21 mothers her own children and has interaction with a lot of
22 other people along the course of her life and I think that's
23 a sad thing and the whole matter, of course, is a tragedy.

24 So, the Court has reviewed and considered all
25 pertinent information including, but not limited to, the

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1 presentence investigation report, the addendum, the
2 submissions by counsel, the factors outlined in 18 US Code
3 Section 3553(a) and the sentencing guidelines. The Court has
4 already adopted the factual content of the presentence report
5 and also found the total offense level to be a 38 with a
6 range of 235 to 293.

7 Having been found guilty on counts 1 through 3
8 of the indictment, it's the judgment of this Court that
9 you're hereby committed to the custody of the Bureau of
10 Prisons to be imprisoned for a term of 180 months. This
11 consists of 180 months on counts 1 and 2 and 120 months on
12 count 3, all to run concurrent.

13 The Court finds that a non-guideline sentence
14 here is sufficient, but not greater than necessary to comply
15 with the purposes of sentencing set forth in the statute.
16 Coupled with the life-long term of supervised release, the
17 Court believes this sentence provides just punishment for
18 your offense and provides adequate deterrence for future
19 criminal behavior. In determining this sentence the Court
20 has considered the following factors, in addition to what
21 I've already mentioned: You have no criminal history and
22 there's no evidence that you've done something like this
23 before. The numerous letters, I've already addressed those,
24 that support you, tell me that you've had good character and
25 were valued in this community as a good teacher. The Court

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1 feels that the mental depression that you were suffering
2 from, supported by the evidence in this case, was a causative
3 factor in your situation that occurred. The Court also
4 considered the nature and circumstances of the offense and
5 finds the case is not, as I've said, a typical production
6 case, and I believe the sentence imposed balances the need to
7 hold you as a teacher to a higher standard while adequately
8 taking into consideration the circumstances in the offense
9 and your personal characteristics.

10 While in custody the Court recommends you
11 submit to sex offender evaluation and participate in sex
12 offender treatment, if deemed necessary. In the alternative,
13 it's recommended that you participate in the sex offender
14 management program, if eligible. If you refuse to do that,
15 or cooperate with treatment, the Court will then address this
16 at the time of your release from imprisonment.

17 Upon your release from imprisonment you shall
18 be placed upon supervised release for a term of life on each
19 count to run concurrently. While on supervised release you
20 shall not commit another federal, state or local crime and
21 shall comply with the standard conditions that have been
22 adopted by this Court and the following special conditions:
23 You shall not have any direct or indirect contact with
24 xxxxxxxxxxxxxxxx. You shall not have direct contact with a
25 person under the age of 18 years unless it's supervised by a

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1 person approved of by the probation officer. You shall not
2 have indirect contact with a person under the age of 18
3 through another person or through a device, including a
4 telephone, computer, radio or other means, unless it's
5 supervised by a person approved of by the probation office.
6 You shall reasonably avoid and remove yourself from
7 situations in which you have any contact or form of contact
8 with a minor. You shall not be in any area where persons
9 under the age of 18 are likely to congregate, such as school
10 grounds, child care centers or playgrounds without the
11 permission of the probation office.

12 You shall register with the state sex offender
13 registry agency in any state where you reside, are employed,
14 carry on a vocation or are a student. You shall participate
15 in a mental health program which shall include, but not be
16 limited to, participation in a treatment program for sexual
17 disorders. The program shall be approved of by the United
18 States Probation Office.

19 Your supervised release may include
20 examinations using a polygraph, computerized voice stress
21 analyzer or other similar device to obtain information
22 necessary for supervision, case monitoring and treatment.
23 You shall answer the questions posed during the examination,
24 subject to your right to challenge in a court of law, the use
25 of such statements as violations of your Fifth Amendment

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1 rights. In this regard you shall be deemed to have not
2 waived your Fifth Amendment rights. The results of any
3 examination shall be disclosed to the United States Probation
4 Office and the Court but shall not be further disclosed
5 without the approval of the Court.

6 You shall contribute to the cost of any
7 evaluation, testing and/or treatment and/or monitoring
8 services rendered in an amount to be determined by the
9 probation office based on your ability to pay and
10 availability of third-party payments.

11 You shall not use or possess any computer or
12 any other device with online capabilities at any location,
13 except at your place of employment, unless you participate in
14 the Computer Restriction and Monitoring Program. You shall
15 permit the United States Probation Office to conduct
16 periodic, unannounced examinations of any computer equipment
17 you use or possess, limited to all hardware and software
18 related to online use. For example, the use of the Worldwide
19 Web, e-mail, instant messaging and the like. These
20 examinations may include retrieval and copying of data
21 related to online use, and the viewing of pictures and movies
22 which may be potential violations of the terms and conditions
23 of supervised release from this computer equipment including
24 any internal or external peripherals, internet-capable
25 devices and data storage media. This computer equipment may

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1 be removed to the probation office or to the office -- to the
2 probation office or to an office of their designee for more
3 thorough examination. The probation office may use and/or
4 install any hardware or software system that is needed to
5 monitor your computer use, subject to the limitations I
6 described.

7 If your employment requires the use of a
8 computer you may use a computer in connection with your
9 employment approved by the probation officer, at your place
10 of employment, provided you notify your employer of the
11 nature of your conviction and the fact that your conviction
12 was facilitated by the use of a computer. The probation
13 office must confirm your compliance with this notification
14 requirement.

15 In the event your treatment provider
16 determines that the use of a computer or internet service is
17 contraindicated to your course of recovery, the Court, upon
18 considering such information, may prohibit the use of the
19 computer if the Court is convinced that such is the case
20 based upon the evidence.

21 While in treatment and for the remainder of
22 the term of supervision following completion of treatment,
23 you shall not view, possess, own, subscribe to or possess
24 material including pictures, videotapes, films, magazines,
25 books, telephone service, electronic media, computer programs

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1 or computer services that depict sexually explicit conduct,
2 as defined in 18 US Code Section 2256(2).

3 You shall pay to the Clerk of the Court a
4 special assessment of \$300 which is due immediately. The
5 Court finds that you do not have the ability to pay a fine
6 and does not order a fine.

7 Both you and the government have the right to
8 appeal this sentence and if you're going to take an appeal
9 you have to file it within 14 days of the date of this
10 sentence.

11 The Court will request that the Bureau of
12 Prisons place you as close to the Triple Cities area as is
13 possible.

14 Is there anything further from the defense?

15 MR. BRYAN: Nothing, your Honor, other than to
16 say thank you on behalf of Mr. Puglisi and everyone here.

17 MR. ACCARDI: Nothing further, your Honor.

18 MR. LOVRIC: No, your Honor.

19 THE COURT: Good luck. Court stands
20 adjourned.

21 (Court stands adjourned)

C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: November 10, 2010.